

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A.NO. /182/92  
T.A.NO.

DATE OF DECISION 07/2/1997

Shri Harikishandas Khakhar Petitioner

Mr. K.C. Bhatt

Advocate for the Petitioner (s)

Versus

Union of India & ors.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan

Member (A)

The Hon'ble Mr. T. N. Bhat

Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Harkishandas Khakhar,  
Sorting Postman,  
Junagadh Post Office,  
New P & T Colony,  
Junagadh-362 001.

: Applicant

(Advocate: Mr. K.C. Bhatt)

Versus

1. Union of India  
Through:  
The Director-General,  
Department of Posts  
Ministry of Communication  
Parliament Street,  
New Delhi-110 001.

2. The Chief Postmaster General,  
Gujarat Circle  
Ahmedabad-380 001.

3. The Postmaster General,  
Rajkot Region,  
Rajkot-360 001.

4. The Supdt. of Post Office,  
Junagadh Division,  
Junagadh-362 001.

5. The Postmaster  
Head Post Office  
Junagadh-362 001.

: Respondents

(Advocate: Mr. Akil Kureshi)

JUDGMENT

OA/ 182/92

Date: 07/2/1997

Per: Hon'ble Mr. V. Radhakrishnan : Member(A)

Heard Mr. K.C. Bhatt and Mr. Akil Kureshi, the learned counsels for the applicant and the respondents respectively.

2. The applicant was working in the respondents department from 1956 as Group 'D' employee and from 1960 he was working in the Mail Overseer Cadre. The applicant has challenged the impugned orders of

retirement passed on him by the respondents at Annexure A-1 and A-2, according to which the applicant was retired from service. He alleges that he was issued notice of retirement under Rule F.R. 56(J) and Rule 48(1) (b) of C.C.S. (Pension) Rules, 1972. The second notice was issued under F.R. 56(J) (II) as a corrigendum. He claims both the orders issued are null and void. According to him the orders dated 20.12.1991 were issued after a long period after he had completed 30 years of service in 1986. He claims that even for action under Rule FR 56(J) as per time schedule prescribed under Rule, the review of the applicant's case should have been undertaken in the quarter of April to June, 1990 before he attained the age of 55 years and because of this fault the orders issued are illegal. He has also relied upon the judgment of the Principal Bench of C.A.T. in the case of Karamchand vs. Union of India by which the impugned order of retirement was quashed because the review of the applicant's case was done after he had completed 30 years of service. He also claims that the second order issued dated 7.3.1992 (Annexure A-2) is illegal and to be quashed and set aside.

3. The main ground on which he challenges the orders is that the review of the applicant's case was undertaken after he had completed 30 years of

service in November, 1990. If action was contemplated under the FR 56(J) this review should have been undertaken in the quarter April to June 1991 before he attained the age of 55 years. He also claims that three months notice should have been given before he completed 55 years of age i.e. notice should have been issued before 23.9.1991. The notices were actually issued on 20.12.1991 followed by corrigendum dated 7.3.1992. He also claims that the orders at Annexure A-1 and A-2 do not give reasons for the action taken. The applicant gave a representation against the orders to the Representation Committee of the respondent. At the time of filing the O.A., his representation has not been decided but it has rejected in May, 1992. Hence, the applicant was allowed the amendment to challenge the orders of the Representation Committee rejecting his representation. He also challenges the decision of the Representation Committee as it is not in the form of a speaking order. Hence, he prays for the following reliefs:-

- "i) The notice dated 20.12.1991 by the Supdt. of Post Offices, Junagadh Division under his Memo No.C-10/91 (Annexure A-1) be quashed and set aside.
- ii) The notice dated 7.3.1992 by the Supdt. of Post Offices, Junagadh Division under his Memo No.C-10/92 (Annexure A-2) be quashed and set aside.

- iii) The Respondents please be directed to reinstate the applicant immediately and he should be treated as re-instated as on 21.3.92 F/N with all consequential benefits being treated as in job from 21.3.92 F/N.
- iv) The Respondents please be directed to allow the applicant to work in lower post of Postman to his substantive post from which he was promoted to Mail Overseer and Sorting Postman Cadre if his immediate supervisors i.e. The Postmaster Junagadh and the Supdt. of Post Officers, Junagadh the present Officers who are satisfied with his work and now do not like due to the direction of the higher authority and the applicant has specifically applied for reversion to Postman cadre vide Annexure A-10, A-11.
- v) The Respondents please be directed to pay the cost of this application as the applicant is very poor and belongs to very low cadre of Postman etc.
- vi) Any other suitable relief may please be granted.
- vii) The decision of the representation Committee consisting of Dy. Director General (Per) and Member (Per) Postal Service Board conveyed under communication No. 135-5/92-SPE-II dated 19.5.92 by ADG (SPN) O/O D.G. Post New Delhi be quashed and set aside (Annexure A-14).

4. The respondents have filed reply. They have contested the claim of the applicant. According to them the services of the applicant who was working as Mail Overseer/Sorting Postman since 1980 were not satisfactory and there were several adverse remarks in his C.Rs. for different years as given in Annexure R-I). The case of the applicant was referred to the High Power Committee on 15.4.1991 and the Committee met on 25.10.1991 and its decision considering the applicant unfit for retention after 55 years of age and the decision was conveyed on 28.11.1991. A notice

was served on the applicant dated 20.12.1992. The notice under reference cited Rule 56 of F.R. and 48(i) (b) of C.C.S.(Pension)Rules, 1972 instead of F.R. 56(J) (ii) only. This correction was issued by Memo dated 7.3.1992. The applicant was accordingly retired on 20.12.1992. Rule 48(i) (b) was wrongly quoted in the Memo dated 20.12.1992. The applicant was not retired on completion of 30 years service but he has been retired on attaining the age of 55 years under the provisions of Clause (I) (ii) of Rule 56 of the F.R. The applicant's case was taken up for review on 25.10.91 before the applicant had completed 55 years of age. The notice was also served on 20.12.91 before he had completed 55 years of age. They have also stated that the Memo dated 20.12.1991 and 7.3.1992 issued by the competent authority under the provisions of FR 56(J) (ii). The representation of the applicant were forwarded to the higher authority and the decision of the higher authority was also conveyed to him. They have also denied that the applicant's contention that there were no adverse remarks communicated to him. The list at Annexure R-1 list shows that the applicant was getting all along adverse remarks from 1962-63 upto 1990. The applicant has filed rejoinder. He has stated that the competent authority himself has not issued the orders but it has been issued by the higher authority and accordingly, the orders are illegal. He has also pointed out that there were lacuna in the said notice issued as per

Annexure A-1 which was later on corrected by Annexure A-2. He is of the view that both the orders were issued without application of mind. He contends that the mention of both the rules i.e. (i) FR 56(J) and Rule (ii) 48 (I) (b) of C.C.S. (Pension) Rules, 1972 simultaneously cannot be done and this itself is illegal. He also alleged that no mention of public interest in the order and the appropriate authority had not given notice at the proper time. His immediate superior recommended his retention. He also states that after the completion of 30 years his case was reviewed and there cannot be any further review. The notice was given on 7.3.1992. He also mentioned the following cases in support of his contention:-

- (i) ATC 1989(9) p.202 CAT, Calcutta
- (ii) ATC 1987 (4) p.310 CAT, Jabalpur
- (iii) ATC 1991 (17) p.406 CAT Jodhpur & Jaipur

5. During the hearing Mr. Bhattacharya, the learned counsel for the applicant states that the first review was taken before the applicant completed the age of superannuation. There cannot be any further review as the review has already been conducted. There is a lacuna in issuing of Annexure A-1, which cannot be corrected by issuing of Annexure A-2. He also stated that three months notice was not given before he retired and no decision was taken in his representation before he retired. He also stated that the orders

are void and ab initio and has no validity.

6. Mr. Kuneshia the learned counsel for the respondents opposed the arguments of Mr. Bhatt and stated that the notice was given on 20.12.1991 and he was retired on 21.3.1992. There was a mistake in quoting both the FR and CCSR Rules in Annexure A-1 and it was corrected by issuing a letter dated 7.3.1992 Annexure A-2.

7. So far as the question that his case was not dealt with according to the schedule laid down in the guidelines, he pointed out that the applicant's case was taken up for review in 15.4.1991 before he attained the age of 55 years. The High Power Committee met on 25.10.1991 and decided that the applicant was unfit for retention. The decision was conveyed on 20.11.1991. Accordingly, notice was served on the applicant on 20.12.1991. Hence, the review undertaken was well in time. He also pointed out that even if the time schedule as laid down in the guidelines is not followed as alleged by the applicant, the orders cannot be legally challenged. He pointed out that the Hon'ble Supreme Court had in a case of Union of India & Ors. vs. Nasirmiya Ahmedmiya Chauhan in CA No. 5025 of 1993 reversed the judgment of this Tribunal which had allowed the O.A. on the ground that the applicant's case for premature retirement was not considered within the time schedule prescribed by the guidelines.

It has stated that the appropriate authority can exercise the power under FR 56(j) at any time in public interest after the Government servant attained the relevant age or has completed the period of service as provided under the rules. It has also stated that "the Tribunal was wholly unjustified in holding that prejudice was caused to the respondent in the sense that he could legitimately believed that under the instructions his case would not be reviewed after the lapse of certain period. The action under Fundamental Rule 56(j) against a Government servant is dependent on his service record earned by him till he reaches the age or completed the service provided under the said rule. If the record is adverse then he cannot take shelter behind the executive instructions and must be chopped off as and when the catches the eye of the prescribed authority". Hence he claimed that there is no illegality in the premature retirement of the applicant.

8. We have heard both the learned counsels and gone through the records produced before us. In the reply given by the respondents it is quite clear that the services of the applicant was not without blemish and on the other hand he has been given number of minor penalties and adverse remarks for various misconducts. The case of the applicant has been reviewed by High Power Committee as per the rules and they have come to the conclusion that the services of the applicant cannot be continued beyond 55 years.

There is no merit in the applicant's contention that the only appointing authority should decide on the retention of the applicant and not by High Power Committee. On the other hand the High Power Committee consisting of senior officers has been constituted to safeguard the interest of the employees. In view of the Supreme Court's judgment ~~ebid~~ we are of the view that the applicant has been retired legally as per the rules. Hence, the application is devoid of merits and is dismissed. No order as to costs.

  
(T.N.Bhat)  
Member (J)

  
(V.Radhakrishnan)  
Member (A)